IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ELGIN SWEEPER COMPANY; GUZZLER MANUFACTURING, INC.; FEDERAL SIGNAL CORPORATION,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 94-G-0623-S
POWERSCREEN INTERNATIONAL, PLC,	)	
Defendant.	)	

MEMORANDUM OPINION

The above-styled case is back from the Eleventh Circuit on orders entered December 23, 1997, remanding the case to the district court to determine the issue of prepaid insurance, and March 6, 1998, remanding the case to the district court to determine the reasonable amount of attorneys' fees to be awarded to appellants. Pursuant to the mandates the court has the following motions before it:

1) Plaintiffs' motion for summary judgment on the insurance prepayment issue in the amount of $92,640.00 plus costs and contractual prejudgment interest and attorneys' fees;

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2) Defendant's motion for summary judgment on the $92,000.00 insurance prepayment issue;

3) Defendant's motion to strike the affidavit of Richard L. Ritz;

4) Defendant's motion to strike the affidavit of Kim Wehrenberg and portions of the reply brief in further support of cross-motions for summary judgment; and

5) Plaintiffs' petition for attorneys' fees.

The cross-motions for summary judgment before the court deal with whether a $92,640.00 Guzzler Manufacturing, Inc. [hereinafter Guzzler] insurance prepayment[1] was an asset or a receivable. Initially this court granted defendant Powerscreen International, PLC [hereinafter Powerscreen] summary judgment on the issue and thereafter denied the plaintiffs' motion to reconsider. Rather than reiterate the reasoning behind granting defendant's motion, the court is attaching copies of the April 20, 1995, and August 8, 1995, opinions and orders to be incorporated as part of this memorandum opinion.

In remanding the issue of prepaid insurance the circuit did not reverse this court, but remanded on the basis of insuffi-

[1] This prepaid amount provided Guzzler with liability insurance from March, the time of closing, to August 1993, the renewal time for insurance coverage.

cient material in the record by which the trial court could grant summary judgment. Pertinent portions of the mandate follow:

> The procedural development of this issue is somewhat confusing. Powerscreen filed a motion for partial summary judgment on September 9, 1994. Powerscreen submitted evidence in support of the summary judgment on September 24, 1994. Appellants submitted their evidence in opposition on October 11, 1994. On October 24, 1994, the trial judge entered an order allowing a deposition of the arbitrator [Arthur Anderson] to be taken and stating that "all issues decided by the arbitrator or all issues that could have been decided by the arbitrator be and they hereby are [ruled] out of the case." In response to that order, both sides filed statements of issues decided by arbitration on February 13, 1995. The trial court heard oral arguments on the summary judgment motion on March 2, 1995. The parties did not discuss or argue the prepaid insurance issue in any of those materials. After the oral argument but before the judge issued the order on the summary judgment motion, Appellants wrote a letter to the trial judge which apparently stated that
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> > [Discovery] to date has shown that one additional issue was in fact resolved by arbitration. In the deposition of Barry Cosgrove, the financial director of Powerscreen, he acknowledged that the closing balance sheet reflected a $92,000 receivable from Powerscreen which was not objected to by Powerscreen in the arbitration. Accordingly, Powerscreen's obligation on this receivable has been finally and conclusively determined.
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> Powerscreen responded by letter on March 29, 1995, and set forth its disagreement with Appellants' assertions. Apparently several more letters were sent to the judge

> on this issue.[2] These letters are not included in the record on appeal.[3] Since the issue was not briefed[4] nor argued by the parties at the trial level, there is nothing in the record which allows this Court to review the decision. There is likewise nothing in the record on which the trial judge could permissibly grant summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Based on this record summary judgment was improvidently granted and must be reversed. This issue is remanded to the trial court.

Upon review of the transcript of the March 2, 1995, hearing on the summary judgment motion (document 53), the following discussion occurred:

> MR. MILLER: Judge, one thing, although it really doesn't relate to this motion, on the accounts receivable issue, which Tony

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[2] The complete text of footnote 3 of the mandate, inserted here, reads as follows: "At oral argument, Powerscreen stated that this issue was decided informally through letters to the judge and referred to a letter or letters, written after those listed above, in which Powerscreen stated that it had contacted the insurance company and had learned that the policy had not been assigned. Powerscreen's counsel also stated that no one made any objections concerning proper authentication or Rule 56 until after the trial judge granted the motion in favor of Powerscreen." These statements are true.

[3] The complete text of footnote 4 of the mandate, inserted here, reads as follows: "One letter is attached as an exhibit to the motion for reconsideration of the summary judgment ruling and is contained in the record on appeal."

[4] The issue was fully briefed at the trial level with letter briefs. Counsel did not ask that the record be supplemented with copies of those letters--a request the trial court would have granted.

mentioned as showing how unfair our position was.

In fact, since the time of this arbitration, we have made the payment that we believe is required under that accounts receivable section to the plaintiffs in the case, the payment for all accounts receivable not collected past one hundred and twenty days, and deducted from that payment the reserve that they got in the arbitration saying that if you got a reserve in the arbitration, okay, we have got this other obligation, we make that payment there, and they have contended that, no, that we don't get the benefit of the reserve, which relates in many instances to the same accounts that we were required to pay them for.

MR. VALIULIS: Your Honor, I have to, I am sorry, but that is a matter off the record in a sense that it's not before the court. I totally disagree with counsel's statement of what they have done. They haven't paid it. There is a big dispute about what is owed, not just with respect to whether they are entitled to a credit under the reserve, but other accounts receivable. That issue is very much alive and it has not been resolved and the dispute does not simply relate to whether they are entitled to a credit on the reserve. It relates to other--

THE COURT: I think if you want me to consider that, you can write me a letter about that.

MR. MILLER: OKAY.

MR. VALIULIS: That's fine, Your Honor.

(Doc. 53, March 2, 1995, T. 42-43).

Pursuant to the court's invitation to write a letter, a series of letter briefs on the $92,640.00 prepaid insurance issue followed. Because the letters are the basis of the court's decision granting Powerscreen summary judgment on the issue,[5] the court hereby supplements the record with the following letters, said letters to be attached to this memorandum opinion and made a part of the record:

1) March 22, 1995, letter from Anthony C. Valiulis, counsel for plaintiffs, an excerpt from which is cited by the circuit;

2) March 29, 1995, letter from James L. Goyer III, counsel for Powerscreen, dealing exclusively with the $92,000.00 prepaid insurance issue;

3) March 30, 1995, letter from Anthony C. Valiulis, counsel for plaintiffs, in response to Powerscreen's March 29, 1995, letter;

4) April 5, 1995, letter from T. Louis Coppedge, member of defendant's team of counsel, responding to the March 30, 1995, letter from Mr. Valiulis, with attachments of: copy of September 22, 1994,

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[5] The court did not and is not in the habit of "improvidently" granting summary judgment motions without proper foundation. As stated in footnote 4 of this opinion: "The issue was fully briefed at the trial level with letter briefs. Counsel did not ask that the record be supplemented with copies of those letters--a request the trial court would have granted." Until receipt of the mandate this court was unaware that the circuit was not supplied with supporting materials by which a complete record was available for review.

letter from Kim A. Wehrenberg; copy of a purported September 21, 1994, assignment from Guzzler Manufacturing, Inc. [hereinafter Guzzler]; copy of a March 23, 1993, facsimile of a memorandum from Mary Ellen Penicook to Jay Tannon; a March 19, 1993, copy of a Federal Signal Corporation [hereinafter Federal Signal][6] intracompany correspondence from Pam Krage to Kim Wehrenberg; and copy of a March 23, 1993, memorandum from Guzzler to J. R. Prewitt & Associates relative to an assignment;

5) April 6, 1993, letter to the court from T. Louis Coppedge;

6) April 7, 1995, letter to the court from T. Louis Coppedge enclosing a copy of the Declarations Update Endorsement pertaining to the insurance policy at issue showing that both Powerscreen International, PLC [hereinafter Powerscreen] and Federal Signal were listed as "additional insureds" on the insurance policy effective March 31, 1993;

7) July 7, 1995, letter to counsel from Mary Anne Gibbons, Law Clerk to the undersigned;

8) July 14, 1995, letter to the court from Richard H. Monk III, counsel for plaintiffs, in response to the July 7, 1995, letter;

9) July 14, 1995, letter to the court from T. Louis Coppedge in response to the July 7, 1995, letter;

10) July 17, 1995, letter to the court from Richard H. Monk III.

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[6] Federal Signal is the parent company of Elgin Sweeper.

In addition to the briefs[7] and affidavits submitted to the court on the cross-motions for summary judgment presently before the court, the court has received letters briefing the issue. Because of the importance of the material contained therein, the court is of the opinion that the record be supplemented with these more recent communications, a listing being set forth below:

1) An April 17, 1998, letter to the court from Powerscreen's counsel;

2) An April 20, 1998, facsimile letter to the court from Anthony C. Valiulis in response to the April 17, 1998, letter; and

3) An April 21, 1998, letter to the court from James L. Goyer III responding to the April 20, 1998, letter.

The dispute before the court centers around a practice of Guzzler's by which it prepaid its annual insurance premium in September for the upcoming year. Pursuant to that practice Guzzler remitted to J. R. Prewitt & Associates [hereinafter Prewitt] located in Birmingham, Alabama, its annual insurance premium in September 1992, covering it through August 1993 for general liability policy No. OGLG16261300. This policy was in

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[7] While briefs are not normally made a part of the record the court will entertain a motion to supplement the record if desired by the parties.

place at the time of closing of the sale of Guzzler to Elgin Sweeper Company [hereinafter Elgin]. According to Jay Middleton Tannon of Brown, Todd & Heyburn, PLLC, who was primarily responsible for assisting Powerscreen in the negotiations leading to the sale of Guzzler to Elgin/Federal and drafting the stock purchase agreement, no agreement--oral or written--was made on behalf of Powerscreen with Kim Wehrenberg to pay Elgin/Federal Signal $92,640.00 in exchange for an assignment of the general liability and products liability insurance policy covering Guzzler from September 1, 1992, through August 31, 1993. According to Tannon, had such an agreement been made Powerscreen would have required it to be in writing. The stock purchase agreement does not mention any assignment of this policy or any other insurance policy.

Pursuant to the terms of the negotiated purchase, plaintiffs Elgin/Federal Signal prepared a closing balance sheet to determine the net book value of Guzzler.[8] On the balance sheet **Elgin/Federal Signal** listed the $92,640.00 insurance premium as an **asset** of Guzzler under the line item "other

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[8] By preparing and submitting the balance sheet and position papers to the arbitrator Elgin/Federal Signal set the parameters of the arbitration.

receivables," thereby increasing the net book value of Guzzler. Powerscreen did not object[9] to the premium's being listed on the asset side of the closing balance sheet because the increased net book value was to its advantage.[10] Elgin/Federal Signal did not include the $92,640.00 insurance prepayment as an "accounts receivable" subject to paragraph 4 of the stock purchase agreement. According to the affidavit of Martha Harkness, partner in the accounting firm of Ross Lane & Company LLC [hereinafter Ross Lane] who assisted Powerscreen with the preparation of the closing balance sheet and other submissions made to arbitrator Arthur Anderson in connection with the arbitration of the net book value of Guzzler as of March 15, 1993, "it was never contem-

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[9] According to the stock purchase agreement any objections that Powerscreen may have had to the closing balance sheet were to be submitted to arbitrator Arthur Anderson & Company [hereinafter Arthur Anderson] for a determination. Since Powerscreen had no objection to the $92,640.00 insurance prepayment's being classified as an "other receivable" and an asset of Guzzler, Arthur Anderson was not called upon to make an express determination on that specific issue.

[10] This insurance was an asset of Guzzler as of closing, protecting it for product liability claims on machines manufactured between March 1993 and August 1993. Since the insurance had already been paid for once there was no reason for Powerscreen to think it would have to pay for the insurance a second time under the listing of the 120 days aged receivables.

plated that this item [$92,640.00] was an 'account receivable'[11] or 'trade receivable' that would be included in the listing of 'aged accounts receivables'[12] as provided for by paragraph 4 of the Stock Purchase Agreement. In fact, this item was not one of the specific accounts contained in the detailed listing of 'accounts receivable' as reported in the closing balance sheet." Mrs. Harkness went further to state the following:

> The Stock Purchase Agreement and the closing balance sheet specifically provided for the payment of an inter-company debt between Guzzler and Powerscreen. Had this actually been an account owed by Powerscreen, I would have simply offset the inter-company debt by the amount owed by Powerscreen. This would have been the most practical and cleanest way to handle this item if there had been an amount owing from Powerscreen.

No objection was made as to the way the $92,640.00 item was listed on the closing balance sheet. The arbitrator made a final and binding decision: The $92,640.00 insurance prepayment was included as an **asset** of Guzzler, protecting it from product

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[11] "Other receivables" does not signify debt. Guzzler paid for the insurance. Payment of the insurance is, therefore, shown as an asset.

[12] Powerscreen has consistently taken the position that the 120 days aged receivables, as contemplated by the stock purchase agreement, was to be dealt with outside of arbitration. When Elgin/Federal Signal through its closing balance sheet and position papers submitted these issues to the arbitrator Powerscreen was forced to respond.

liability claims on machines manufactured between March 1993 and August 1993.

When plaintiffs presented Powerscreen its first listing of the "aged accounts receivable" 120 days after closing in July 1993,[13] the $92,640.00 insurance prepayment appeared on the list. Powerscreen objected to its inclusion and informed Elgin/Federal Signal that the $92,640.00 was not an "aged account receivable," Guzzler's having already paid the amount. Powerscreen tendered to Elgin/Federal Signal what it believed to be the correct amount due for the "aged accounts receivables," less the $92,640.00 insurance prepayment. Over objections from defendant, Elgin/Federal Signal applied the bulk of the payment to the $92,640.00 insurance prepayment and has continued to do so from that time forward.

Plaintiffs have contended that after the sale Guzzler's liability was covered by the Federal Signal policies. Since the Prewitt liability insurance policy was not needed it was assigned

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[13] Paragraph 4 of the Stock Purchase Agreement had a proviso which read as follows: "A reserve for accounts receivable shall be included [on the closing balance sheet] and if the company does not collect all accounts receivable existing as of the Closing, within 120 days of Closing, then Seller [Powerscreen] shall pay Buyer [Elgin] the amount of the uncollected accounts less the reserve, and such accounts shall be assigned to Seller."

to Powerscreen. This might have been its intention following the closing, as indicated by a March 19, 1993, Federal Signal inter-office memo from Pam Krage to Kim Wehrenberg;[14] a March 23, 1993, facsimile from Mary Ellen Pennicock, Elgin/Federal Signal in-house counsel to Jay Tannon;[15] and a March 29, 1993, letter of Susan Ragland, controller of Guzzler.[16] According to the affidavit of Mr. Prewitt filed with the court, however, the policy was never assigned. A declaration endorsement made effective March 31, 1993, changed the policy to designate both Powerscreen and Federal Signal as additional insureds.[17] Nothing before the court indicates that Powerscreen asked for or agreed to an assignment of the policy or was aware prior to July 1993 and

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[14] This March 19, 1993, memo was written after the closing.

[15] This March 23, 1993, memo was sent after the closing. Ms. Pennicook testified by deposition that the purpose of the memo was to allow Mr. Tannon to "make a decision as to whether he wanted to keep it or wanted to cancel it and receive the proceeds." She never asked Mr. Prewitt to assign the policy to Powerscreen. Her only conversation with Mr. Prewitt was to explain the indemnification provisions with respect to product liability as contained in the stock purchase agreement.

[16] This letter was written after the sale of the company.

[17] There is nothing in the record to indicate that Powerscreen knew about, requested, or consented to the endorsement to add it as an additional insured to the Guzzler insurance policy.

thereafter that plaintiffs' position was that an assignment had taken place. The policy coverage and insurance protection remained with Guzzler through August 31, 1993, though not as the sole insured.

It must be pointed out at this point that according to Mr. Prewitt's supplemental affidavit, with attachments, an audit of the policy in question was performed in late 1993: "It was determined that Guzzler was charged too much in premiums ($92,640.00) for that particular policy. Therefore, Guzzler was given a credit of $42,118.00 which it applied to subsequent premiums. A copy of the invoice representing the $42,118.00 credit is attached hereto as Exhibit 4."[18] Thus the correct yearly premium for the policy was $50,522.00, not the $92,640.00. Defendant had liability protection for Guzzler under that policy for the first 196 days of the year. Plaintiff Guzzler, under ownership of Elgin/Federal Signal, was covered for the remaining 169 days of the year. Figuring the yearly premium of $50,522.00 on a daily basis of $138.42 a day the parties are arguing about a prepaid amount of $23,392.98, paid by Powerscreen. This does not take into consideration that $38,416.00 of the refund was attrib-

[18] There is no evidence before the court that Elgin/Federal Signal returned any of this money to Powerscreen.

utable to Powerscreen's overpayment of the policy for the length of time it owned the policy prior to the sale of Guzzler to Elgin/Federal Signal.

A September 22, 1994, letter from Kim Wehrenberg of Federal Signal to Jeff Hunt of Powerscreen purports to assign the policy to Powerscreen after the policy had expired.[19] Deposition testimony of Susan Ragland verifies that the $92,640.00 prepaid insurance premium included in the July 15, 1993, list of accounts receivable provided to Powerscreen was **not** included as an accounts receivable on the closing balance sheet. Ms. Ragland testified that the amount was added **after** the closing balance sheet was prepared.

Ms. Ragland's testimony is substantiated by the events centered around the closing and with paragraph 4 of the stock purchase agreement. No mention of the assignment appears.

Based on the above the court holds that Powerscreen is due summary judgment as a matter of law on the issue of the $92,640.00 prepaid insurance: 1) the $92,640.00 prepaid insurance

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[19] Interestingly, the letter additionally acknowledges receipt for payment of the $92,640.00 + nine percent interest by wire transfer. Federal Signal unilaterally designated a portion of defendant's payment for past due accounts. This letter "assigning" the policy is well more than a year after plaintiffs contend the policy had been assigned.

premium was shown on the closing balance sheet as an asset of Guzzler and determined so by the arbitrator; 2) The $92,640.00 amount does not belong in the "aged accounts receivables;" and, 3)the net aged receivables have been paid in their entirety by Powerscreen. Elgin/Federal Signal is trying to totally charge Powerscreen for the policy while it retained excess coverage rights in the policy. By keeping two interests in the policy (one in their name and one in the name of Guzzler) while at the same time trying to make Powerscreen pay $92,640.00[20] a second time is not only unjust enrichment but gives the appearance of outright dishonesty and overreaching. Elgin/Federal Signal kept an interest in the policy and kept the rebate. Powerscreen actually got less than the "assignment" which plaintiff purportedly gave it and which was never part of the bargain.

In granting defendant's motion for summary judgment on this issue of prepaid insurance coverage and denying plaintiffs' motion, the court notes the following flaws in plaintiffs' argument:

1) No assignment took place;

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[20] Even had the insurance premium been a debt as claimed by plaintiffs, they made no adjustment for the refund received on the policy.

2) The named insured was not removed;

3) Policy coverage and protection remained with Guzzler throughout; and

4) There is no evidence reflecting that the parties agreed at closing to assign the policy to Powerscreen.

The court hereby denies Powerscreen's motions to strike the affidavits of Richard L. Ritz and Kim Wehrenberg. Hearsay portions of the affidavits were not considered. The court, in its discretion, overrules the motion of Powerscreen to strike portions of the reply brief because the brief exceeded the court's page limitation for reply briefs.

Pursuant to the indemnity provision of the stock purchase agreement Powerscreen is only obligated once the obligation reaches the $260,000.00 threshold. Once reached Powerscreen must pay from the first dollar. In its decision the Eleventh Circuit determined that this court omitted two amounts from the threshold calculation: $17,225.51 in attorneys' fees and costs and $6,300.00 for the unique services and environmental matters. Addition of these two amounts causes the damages awarded under the indemnity provision to exceed the $260,000.00 threshold. Accordingly, the court holds that the judgment should be amended

to reflect an additional $265,039.31 [21] in damages for plaintiffs.

This court's order and opinion entered today also reflect the mandate of the Circuit to reverse its earlier order to plaintiffs to reissue a check to Powerscreen for $3,750.00. The court holds that this earlier order be reversed, having previously granted summary judgment on the conversion issue.

Having disposed of the issue of prepaid insurance, reversal of the order providing for defendant's recovery of the $3,750.00 check, and allowing for additions to the calculation of the threshold issue as set forth in the December 23, 1997, mandate, the court turns its attention to plaintiff's petition for attorneys' fees.

The language of the mandate from the Eleventh Circuit reads as follows:

> Appellants' motion for attorney's fees is GRANTED as to entitlement on the claim for fees relating to the threshold calculation only. Appellants successfully persuaded this Court that $23,525.51 was improperly excluded from the threshold calculation. Under the

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[21] This amount includes $65,000.00 for the parking lot claim, $176,513.80 for the Department of Transportation claim, $17,225.51 in attorneys' fees, and $6,300.00 for the unique services and environmental matters. As per the stock purchase agreement, once the threshold is reached Powerscreen must pay from the first dollar.

> agreement between the parties, Appellants are contractually entitled to attorney's fees resulting from that representation. Appellant's motion is DENIED except as specifically set forth herein. This matter is REMANDED to the district court for a determination of the reasonable amount of attorney's fees to be awarded to Appellants.

The court must first look to the stock purchase agreement to determine what is said about attorneys' fees in the agreement. Language in paragraph 11(a) under the section entitled "Agreements" reads, in part, as follows:

> Seller agrees to indemnify, defend (if requested) and hold Buyer and Company harmless from and against any and all claims, damages, losses, costs, liabilities or expenses, whether consisting of a cash payment, deficiency, (as may be required by tax laws and regulations, generally accepted accounting principles, or governmental agency), and costs and expenses incidental thereto (including reasonable attorneys' fees), ... arising out of or resulting from (i) any breach or failure of a representation, warranty, covenant or agreement of Seller contained in this Agreement or its Schedules or any deficiency for federal or state or other taxes or penalties resulting from or relating to the conduct of the company's business prior to closing ... and (ii) for any defective product manufactured or shipped by the Company prior to Closing or arising from any contract or law or otherwise for any defective product, failure to warn, breach of implied or express warranties, negligence or misrepresentation as to any product manufactured or shipped before Closing including any personal injury, death or property damage attributable to products manufactured or shipped by the Company prior to Closing. Seller shall also be responsible for the administration and handling of all product claims referred to in Paragraphs 11(a)(ii).

> (b) Seller will have the opportunity to defend, at Seller's expense, claims and demands for which Buyer seeks indemnification.
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> Not withstanding the foregoing, no indemnity for breach of the representations and warranties under this Paragraph 11 shall be paid unless and until the total amount of such indemnity is in excess of Two Hundred and Sixty Thousand ($260,000) Dollars and then shall be paid from the first dollar, but the total amount thereof shall not exceed Five Million ($5,000,000) Dollars.

Appellants have directed the court to *Peebles v. Miley*, 439 So. 2d 137, 139-40 (Ala. 1983), and *Buckley v. Seymour*, 679 So. 2d 220, 227 (Ala. 1996), which set forth Alabama law on the award of attorney's fees. In Alabama attorney fees are recoverable as part of the costs of an action when provided as part of the contract, as here. *Buckley*, 679 So. 2d at 227. *Buckley* quotes the factors set forth in *Peebles* to be considered by a trial court in awarding fees:

> (1) the nature and value of the subject matter of the employment;
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> (2) the learning, skill, and labor requisite to its proper discharge;
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> (3) the time consumed;
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> (4) the professional experience and reputation of the attorney;
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> (5) the weight of his responsibilities;

(6) the measure of success achieved;

(7) the reasonable expenses incurred;

(8) whether the fee is fixed or contingent;

(9) the nature and length of a professional relationship;

(10) the fee customarily charged in the locality for similar legal services:

(11) the likelihood that a particular employment may preclude other employment; and

(12) the time limitations imposed by the client or by the circumstances.

679 So. 2d at 141.

In applying the above-listed factors to the instant case, plaintiffs have petitioned the court for a generous amount. Trial lasted for a month with exorbitant billable hours of approximately $900,000.00 for a case that should have been tried in five days on the part on which plaintiffs succeeded, for a fraction of the amount billed. As plaintiffs have argued in their petition for fees: "More important than time spent is the result obtained." The court agrees. Plaintiffs did not "win" the case. Their recovery is exceptionally modest in comparison with what they tried to get. The threshold was reached, not because of the decision of the jury or the decision of the trial court, but because of the decision of the Court of Appeals.

Because the threshold was reached, plaintiffs were benefitted by an additional $265,039.31 in damages.

Considering the factors to determine fees in light of the "result obtained," coupled with the earlier decision of this court awarding 15 per cent of the recovery as an appropriate fee, the court holds that a fee of $39,756.00 is reasonable and plaintiffs' petition for that amount should be granted.

An order consistent with this opinion is being entered contemporaneously herewith.

DONE and ORDERED this 16th day of October 1998.

UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ELGIN SWEEPER COMPANY;
GUZZLER MANUFACTURING, INC.,

Plaintiffs,

v.

POWERSCREEN INTERNATIONAL, PLC,

Defendant.

CIVIL ACTION NO. 94-G-0623-S

ORDER

This cause comes before the court on the September 29, 1994, motion of defendant Powerscreen International, PLC for summary judgment, or, in the alternative for partial summary judgment, and the September 22, 1994, motion of defendant Powerscreen International, PLC for an order affirming the arbitrator's award. Having considered the motions, the pleadings, the submissions of counsel, the deposition testimony of George R. Vrana, Arthur Andersen's auditing partner, and the applicable law, the court is of the opinion the arbitrator's report was limited to the net book value in accordance with Generally Accepted Accounting Principles [hereinafter GAAP] as determined by the date of the closing balance sheet. The arbitration clause was obviously not intended as an arbitration clause for anything other than the balance sheet. The issue of consequential damages

was not arbitrated. Accordingly, in conformity with the memorandum opinion being entered contemporaneously herewith, it is

ORDERED, ADJUDGED and DECREED that the motion to affirm the arbitrator's award be and it hereby is GRANTED, such decision being limited to Guzzler's net book value in accordance with GAAP as determined by the date of the closing balance sheet. It is

FURTHER ORDERED, ADJUDGED and DECREED that the defendant's motion for partial summary judgment be and it hereby is GRANTED, limited to the plaintiffs' February 13, 1995, STATEMENT OF ISSUES ARBITRATED and defendants' February 13, 1995, SUMMARY OF ISSUES TO ARBITRATE with the following corrections and additions:

1. Plaintiffs' statement of accrued commissions in ¶ 21 is a correct statement rather than defendants' statement of accrued commissions in ¶ 17; and

2. ¶ 5 of defendants' summary should read "Downward" instead of "Upward" to correctly reflect Arthur Andersen's adjustment for Receivable for Texas Sales Tax.

It is

FURTHER ORDERED, ADJUDGED and DECREED that the status of the $92,000.00 insurance prepayment listed as an asset of Guzzler by Elgin/Federal Signal in the closing balance sheet be and it hereby is INCLUDED in the award for partial summary judgment, said item an asset and not a receivable. It is

FURTHER ORDERED, ADJUDGED and DECREED that the following issues were not decided by arbitration:

1. Powerscreen's obligation to purchase receivables uncollected 120 days after the closing;

2. Powerscreen's obligation to pay all Texas sales taxes in excess of $20,000.00;

3. Powerscreen's continuing obligation to indemnify plaintiffs for product liability claims;

4. Breach of contract;

5. Fraud; and,

6. Consequential damages.

It is,

FURTHER ORDERED, ADJUDGED and DECREED that the remaining issues in defendant's summary judgment will be deemed resubmitted upon completion of taking of depositions of fact witnesses by May 31, 1995. It is

FURTHER ORDERED that prior to that date or as soon as possible thereafter, the parties are to submit to the court a summary judgment scheduling order.

DONE and ORDERED this 19th day of April 1995.

UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ELGIN SWEEPER COMPANY; GUZZLER MANUFACTURING, INC., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 94-G-0623-S
POWERSCREEN INTERNATIONAL, PLC, Defendant.	)	

MEMORANDUM OPINION

Guzzler Manufacturing, Inc. [hereinafter Guzzler] produces and distributes various types of sewer-cleaning vehicles for use in municipal and industrial applications. In the fall of 1992, Elgin Sweeper Company [hereinafter Elgin][1] approached Powerscreen International, PLC [hereinafter Powerscreen] about the purchase of Guzzler. Following negotiations, the parties agreed to enter a stock purchase agreement dated February 5, 1993.

The Stock Purchase Agreement, prepared by Elgin, provided that Elgin would prepare an unaudited closing balance sheet after the closing to determine Guzzler's "Net Book Value." If the parties were unable to agree on said value, the net book

[1] "Elgin" will be used to refer to both Elgin Sweeper and its parent Federal Signal.

value would be determined by arbitration according to the following terms set forth in paragraph 4 of the agreement:

> In the event Seller and Buyer are not able to agree within 90 days of Closing on the Company's appropriate Net Book Value, (i.e. the Company's total assets less total liabilities, but excluding those liabilities of the Company to Seller of approximately Eight Million One Hundred Thousand ($8,100,000) Dollars which shall be paid at Closing from the Escrow Account) then any objections that the Seller has to the Closing Balance Sheet shall be submitted to the Independent Audit firm of Arthur Andersen for an opinion in light of the terms and provisions of this Agreement and <u>such opinion shall be final and binding on the parties</u> (emphasis added). ... If the Net Book Value shown on the Closing Balance Sheet, as finally determined [by the arbitrator], is less than Ten Million Eight Hundred Thousand ($10,800,000) Dollars, then the Seller shall pay Buyer the difference between the Net Book Value and Ten Million Eight Hundred Thousand ($10,800,000) Dollars, plus 9% interest per year from the Closing Date until payment in full no later than six (6) months after Closing or ten (10) days after the Independent Auditor issues its opinion, whichever is later. If the net book value of the Company on the Closing Balance Sheet, as finally determined, is more than Ten Million Eight Hundred Thousand ($10,800,000) Dollars, then Buyer shall pay Seller no additional amount under this paragraph.

Since Elgin and Powerscreen were unable to agree on Guzzler's net book value as of the March 15, 1993, closing date, the dispute was submitted to Arthur Andersen & Co. [hereinafter Arthur Andersen] for arbitration.[2] Both parties submitted position papers. Prior to the May 25, 1994, arbitrator's decision fixing Guzzler's net book value at $9,348,350.00, plaintiffs filed suit in this court on March 15, 1994.

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[2] Elgin claimed the assets were worth $7,499,326.00, and Powerscreen valued them at $10,760,637.00.

Pursuant to the order of the court, Powerscreen thereafter tendered $1,609,860.00[3] to Elgin: the $1,451,650.00 difference between the $10,800,000.00 figure set in the Stock Purchase Agreement and Arthur Andersen's net book value figure of $9,348,350.00, plus 9 percent interest from March 15, 1993, in the amount of $158,210.00.

In an effort to determine what the arbitrator decided, the court ordered on October 24, 1994, the following:

> [P]laintiffs be and they hereby are ALLOWED to take the deposition of the Arthur Anderson [sic] arbitrator, said deposition to cover the following:
>
> 1. All issues decided by the arbitrator;
>
> 2. All negative decisions by the arbitrator;
>
> 3. Everything adjusted and the general accounting reason for each adjustment;
>
> 4. The reason for the reserve for losses on each claim and the amount of reserve allocated for each claim;
>
> 5. Every decision to adjust or not to adjust and the reason for each decision; and,
>
> 6. The contents of Arthur Anderson's [sic] verbal report.

The deposition of Arthur Andersen auditing partner George R. Vrana was taken February 2, 1995, pursuant to the above-mentioned

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[3] Powerscreen tendered $1,087,902.00 into the court by motion under Fed. R. Civ. P. 67 on June 1, 1994, and directed the escrow agent to pay the $521,958.00 held in escrow to Elgin. On July 8, 1994, the court directed the clerk of the court to draw a check on funds on deposit in the principal amount of $1,987,902.00, plus interest, for a total of $1,091,163.54, less an administrative fee of $326.15, for a total amount of $1,090,837.39 payable to Elgin.

order. On February 13, 1995, the plaintiffs submitted PLAINTIFFS' STATEMENT OF ISSUES ARBITRATED BY ARTHUR ANDERSEN. On the same date the defendant submitted SUMMARY OF ISSUES SUBMITTED TO ARBITRATION AND THE DECISION OF THE ARBITRATOR TO ADJUST OR NOT TO ADJUST. With the corrections and limitations set forth in the accompanying order, the court affirms the arbitrator's award and awards the defendant partial summary judgment.

By letter of March 22, 1995, Elgin's counsel stated the following:

> [D]iscovery to date has shown that one additional issue was in fact resolved by arbitration. In the deposition of Barry Cosgrove, the financial director of Powerscreen, he acknowledged that the closing balance sheet reflected a $92,000 receivable from Powerscreen which was not objected to by Powerscreen in the arbitration. Accordingly, Powerscreen's obligation on this receivable has been finally and conclusively determined.

Powerscreen responded by letter of March 29, 1995, in which it expressed its disagreement with the above-quoted passage, pointing out that the $92,000.00 amount represented $92,000.00 in prepaid insurance premiums covering Guzzler from March 15, 1993, to August 31, 1993. At the time of preparation of the closing balance sheet, the $92,000.00 was a Guzzler asset relating to this amount of insurance. Since the asset was properly before the arbitrator, Powerscreen had no objection. The court agrees with the following Powerscreen statement: "The fact that Elgin/Federal Signal classified this asset of Guzzler as a 'receivable' in its list of aged receivables instead of a 'prepayment' does not magically transform it into a past due account that was to be listed on the aged receivables list as per

the Stock Purchase Agreement." The $92,000.00 insurance prepayment was finally and conclusively determined by the arbitrator to be an asset of Guzzler rather than an aged receivable and was so noted on the closing balance sheet. Since this asset was included on the closing balance sheet and protected Guzzler from liability claims on machines manufactured between March 1993 and August 1993, there was no reason for Powerscreen to believe it would have to pay for this insurance again. Arthur Andersen determined the $92,000.00 insurance prepayment was an asset of Guzzler--not a receivable. Accordingly, the item is not subject to litigation.

The issue before the court is whether the arbitration covered all issues concerning the sale of Guzzler to Elgin or whether arbitration covered the net book value as of the date of closing. After considering the submissions of counsel and the deposition testimony of George R. Vrana, the court holds that the arbitration was limited to Guzzler's net book value in accordance with GAAP[4] as determined by the date of the closing balance sheet. Issues not arbitrated are set forth in the accompanying order.

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[4] Generally Accepted Accounting Principles.

An order consistent with this opinion is being entered contemporaneously herewith.

DONE and ORDERED this 19th day of April 1995.

UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ELGIN SWEEPER COMPANY; GUZZLER MANUFACTURING, INC.,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 94-G-0623-S
POWERSCREEN INTERNATIONAL, PLC,	)	
Defendant.	)	

ENTERED

AUG 08 1995

ORDER

This cause comes before the court on the following motions:

1) May 23, 1995, joint motion for clarification of the court's order dated April 20, 1995; and

2) May 18, 1995, motion of plaintiff to reconsider the $92,640.00 receivable issue.

Having considered the motions, the pleadings, the submissions of counsel, and the applicable law, the court now makes the following rulings consistent with the memorandum opinion being entered contemporaneously herewith: It is

ORDERED, ADJUDGED and DECREED that having reconsidered the $92,640.00 issue, the court AFFIRMS its previous ruling and holds that the amount is an asset and not a receivable. It is

FURTHER ORDERED, ADJUDGED and DECREED that having considered the position statements submitted as exhibits to the joint motion for clarification, the court holds the following:

1) Powerscreen's position in ¶ 3 of "Exhibit B" that the issue of alleged false and/or fraudulent statements in prior financial statement has been resolved is incorrect.

2) Powerscreen's position in ¶ 5 of "Exhibit B" that the April 20, 1995, order relating to the $92,000.00 insurance prepayment is clear and unambiguous is correct;

3) Powerscreen's position in ¶ 6 of "Exhibit B" that only three issues remain to be litigated, i.e. 1) Powerscreen's obligation to purchase receivables uncollected 120 days after closing; 2) Powerscreen's obligation to pay all Texas sales taxes in excess of $20,000; and 3) Powerscreen's continuing obligation to indemnify plaintiffs for product liability claims is incorrect.

4) Powerscreen's position in ¶ 7 of "Exhibit B" relating to fraud and breach of contract is incorrect.

5) Powerscreen's position in ¶¶ 7(1) and 7(5) of "Exhibit B" that ¶¶ 18-20 of the complaint dealing with false and/or fraudulent financial statements (including, but not limited to, the factual issue of the inventory), and ¶¶ 70-72 of the complaint relating to defects in the painting facility have been eliminated from the lawsuit is incorrect.

6) Powerscreen's position in ¶ 7(2) of "Exhibit B" that ¶¶ 21-25 of the complaint relating to Clean Earth/Employee Non-Compete Agreements have been eliminated from the lawsuit is incorrect.

7) Powerscreen's position in ¶ 7(3) of "Exhibit B" that ¶¶ 26-29, 34-37 of the complaint relating to an Egyptian army prototype and Carolyn discounts have been eliminated from the lawsuit is incorrect.

8) Powerscreen's position in ¶ 7(4) of "Exhibit B" that ¶¶ 30-33, 38-41 of the complaint relating to Allwaste, Inc., Clowe & Cowan, Inc., and Unique Services have been eliminated from the lawsuit is incorrect.

9) Powerscreen's position in ¶ 7(6) of "Exhibit B" that ¶¶ 73-78 of the complaint relating to the federal excise tax audit have been eliminated from the lawsuit is correct.

10) Powerscreen's position in ¶ 7(7) of "Exhibit B" that ¶¶ 101-108 of the complaint relating to environmental matters have been eliminated from the lawsuit is incorrect.

11) Having insufficient information on which to rule, the court reserves ruling on Powerscreen's position in ¶ 7(4)[1] (¶¶ 55-61 of the complaint relating to title to U.K. demonstrator unit).

12) With the exceptions set forth in this order, plaintiffs' position as stated in "Exhibit A" is correct.

DONE and ORDERED this 8th day of August 1995.

UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

[1] "Exhibit B" has incorrectly numbered ¶ 7(4) twice. The court has used the numbers of the exhibit, but has noted the pertinent paragraphs of the complaint in its ruling.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

ELGIN SWEEPER COMPANY; GUZZLER MANUFACTURING, INC.,

Plaintiffs,

v.

POWERSCREEN INTERNATIONAL, PLC,

Defendant.

CIVIL ACTION NO. 94-G-0623-S

MEMORANDUM OPINION

The parties in the above-styled case have disputed whether the $92,640.00 insurance prepayment was an asset or a receivable.[1] At issue is whether the arbitrator had the $92,000.00 issue before him. If it was decided by the arbitrator, or could have been decided by the arbitrator, the issue is foreclosed from this suit.

Paragraph 4 of the Stock Purchase Agreement provides, in part, the following:

[1] This prepaid amount provided Guzzler with insurance coverage from March 1993, the time of closing, to August 1993, the renewal time for insurance coverage.

> [Guzzler[2] and Elgin[3]] shall prepare and deliver to Seller [Powerscreen[4]], an unaudited Closing Balance Sheet of the Company [Guzzler] as of the Closing Date, which shall be prepared in accordance with United States generally accepted accounting principles and shall include all appropriate year-end reserves, accruals and allowances ...; a reserve for accounts receivable shall be included and if the Company does not collect all accounts receivables existing as of Closing, within 120 days of Closing then Seller [Powerscreen] shall pay to Buyer [Elgin] the amount of the uncollected accounts, less the reserve, and such accounts shall be assigned to Seller. ... In the event Seller [Powerscreen] and Buyer [Elgin] are not able to agree within 90 days of Closing on the Company's [Guzzler] appropriate "Net Book Value" ... then any objections that the Seller has to the Closing Balance Sheet shall be submitted to the Independent Audit firm of Arthur Andersen for an opinion in light of the terms and provisions of this Agreement and such opinion shall be final and binding on the parties.

Elgin included the $92,640.00 insurance prepayment in the line item for "other receivables" on the asset side of the ledger. Powerscreen had no objection to its inclusion as an asset.[5] Not only was the $92,640.00 payment listed as an asset, the amount was not included in the reserve set forth for 120 days past due accounts receivable as outlined above.

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[2] Guzzler Manufacturing, Inc. is referred to throughout the opinion as Guzzler.

[3] Elgin Sweeper Company is referred to throughout the opinion as Elgin.

[4] Powerscreen International, PLC is referred to throughout the opinion as Powerscreen.

[5] A copy of the closing balance sheet submitted to the court shows that the item was included as an asset of Guzzler in the line item "other receivables."

Although the $92,640.00 insurance prepayment was not listed in the line item for "accounts receivable" in preparation of the closing balance sheet, Elgin/Federal Signal subsequently listed it in the 120 days past due accounts receivable. Deposition testimony of Susan Ragland, Guzzler Vice President and Controller, states that the $92,640.00 listing in the 120 days past due accounts appeared in July 1994, not on the schedule as prepared at time of closing. The court reiterates its earlier statement: "The fact that Elgin/Federal Signal classified this asset of Guzzler as a 'receivable' in its list of aged receivables instead of a 'prepayment' does not magically transform it into a past due account that was to be listed on the aged receivables list as per the Stock Purchase Agreement."

The deposition testimony of Mr. Vrana addresses the issues of Clean Earth/Employee Non-Compete Agreements (pp. 48-51, 123-129); Egyptian army prototype and Carolyn discounts (pp. 51-52, 58-59, 116-119, 129-130, 144-147); Allwaste, Inc., Clowe & Cowan, Inc., and Unique Services (p. 91); the federal excise tax audit (pp. 41-44, 150, 63); environmental matters (p. 94); and painting facilities (p. 92). His testimony reflects whether the issues were or were not decided or could have been decided by Arthur Andersen. The substance of his testimony is indicated by the accompanying order.

An order consistent with this opinion is being entered contemporaneously herewith. Since much of the accompanying order

deals with this court's April 20, 1995, order and opinion, copies of the April 20, 1995, order and memorandum opinion are being entered contemporaneously herewith as well.

DONE and ORDERED this 8th day of August 1995.

UNITED STATES DISTRICT JUDGE
J. FOY GUIN, JR.

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March 22, 1995

The Honorable J. Foy Guin, Jr.
United States District Court
Northern District of Alabama
1729 North Fifth Avenue
Birmingham, Alabama 35203

Re: **Elgin Sweeper Co., et al., v. Powerscreen, Case No.: CV-94-G-623-S**

Dear Judge Guin:

This is in response to your request that the parties state whether they think additional fact discovery is needed for the Court to rule on the pending motion for summary judgment. Obviously, from Plaintiffs' point of view, on the record before the Court there are at the very least material issues of fact in dispute. That being the case, Plaintiffs believe the Court can rule and deny the pending motion without additional discovery. Defendant, however, has consistently maintained that the parties intended that all disputes be resolved by arbitration. Plaintiffs, on the other hand, maintain that the parties did not intend that the arbitration clause resolve all disputes and that factual discovery will further confirm Plaintiffs' view. Factual discovery would show, for example, what the parties understood, what they discussed, and how they acted both before and after the agreement was signed. Unless the Court holds that the clause unambiguously was intended to resolve all disputes, and there is no such language to that effect in the agreement, this factual evidence is relevant in order to determine the scope of the clause.

So far, three fact witnesses have been deposed, Joseph King, Barry Cosgrove, and Jeffrey Hunt. Their depositions have confirmed that as to many of the issues which Powerscreen is claiming were resolved by Arthur Andersen, Powerscreen continued to act after the arbitration as if those issues had not been resolved. These issues include, among others, Powerscreen's obligation to purchase receivables uncollected 120 days after the closing; Powerscreen's obligation to pay all Texas sales taxes in excess of $20,000; and Powerscreen's continuing obligation to indemnify Plaintiffs regarding product liability claims.

In addition, further discovery is needed as to many of the issues which Powerscreen claims could have been brought in the arbitration. Plaintiffs believe that discovery will show that, even assuming such matters belonged on a closing balance sheet, they either did not arise

*Admitted to practice in Michigan only

Certain members are also admitted to practice in the District of Columbia and in the states of Florida, New York, Texas and Wisconsin

before the closing balance sheet had been submitted or were not known to Plaintiffs in time to be included. In this regard, the record currently does not indicate one way or the other. In other words, as to these claims there are currently material issues of fact in dispute. Such claims include, for example, product liability claims relating, among others, to Little Rock Quarry, Salt Lake City, and Delta Services.[1] They also include the Allwaste issue, Clowe & Cowan, Unique Services, the parking lot flooding problem, the Colin McGrillis issue, and the employee retaliation claims asserted in the litigation.

In addition, discovery to date has shown that one additional issue was in fact resolved by arbitration. In the deposition of Barry Cosgrove, the financial director of Powerscreen, he acknowledged that the closing balance sheet reflected a $92,000 receivable from Powerscreen which was not objected to by Powerscreen in the arbitration. Accordingly, Powerscreen's obligation on this receivable has been finally and conclusively determined.

In summary, we believe that the Court can deny the motion for summary judgment without the need for further fact witness discovery. However, unless the Court determines that the arbitration clause unambiguously was intended to cover all pending disputes between the parties, additional fact discovery would be necessary before summary judgment could even arguably be granted in favor of Powerscreen on all of the issues. As to the individual issues actually considered by the arbitrator, the Court does not need additional fact discovery to determine the extent to which Arthur Andersen has specifically ruled on those issues or the effect of the arbitrator's ruling as to each of them. As to issues not raised before the arbitrator, however, additional discovery is needed.

Very truly yours,

Anthony C. Valiulis

ACV/cam

cc: Linda Friedman (via fascimile, 205-251-8611)
James Goyer (via fascimile, 205-254-1999)

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[1] Even if these product-related claims had been accrued on the closing balance sheet, they would still be part of this case. As discussed at length in Plaintiffs' previously filed materials, Arthur Andersen excluded these items from the determination of Net Book Value solely because they fell within Plaintiffs' right to indemnification from Powerscreen which is being litigated in this case.

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March 29, 1995

VIA HAND DELIVERY

Honorable J. Foy Guin
Senior United States District Judge
Northern District of Alabama
619 Federal Courthouse
1729 N. Fifth Avenue
Birmingham, Alabama 35203

Re: *Elgin Sweeper Co. et al v. Powerscreen*
CV-94-G-0623-S

Dear Judge Guin:

This letter is written on behalf of the defendant, Powerscreen International, PLC ("Powerscreen") in response to an inquiry from Ms. Mary Anne Gibbons. Ms. Gibbons recently contacted our office and stated that you wanted to know whether we agree with a certain paragraph contained in a letter dated March 22, 1995 from Anthony C. Valiulis, Esq. to your Honor. The certain paragraph that Ms. Gibbons made reference to reads as follows:

> "In addition, discovery to date has shown that one additional issue was in fact resolved by arbitration. In the deposition of Barry Cosgrove, the financial director of Powerscreen, he acknowledged that the closing balance sheet reflected a $92,000 receivable from Powerscreen which was not objected to by Powerscreen in the arbitration. Accordingly, Powerscreen's obligation on this receivable has been finally and conclusively determined."

Ms. Gibbons asked whether Powerscreen agreed with the above quoted paragraph in Mr. Valiulis' letter. Louis Coppedge responded by telephone to Ms. Gibbons, and informed her that Powerscreen did not entirely agree with this paragraph, and began to explain why. Ms. Gibbons requested that we write a letter to you explaining the reasons why Powerscreen did not agree with the above quoted paragraph in Mr. Valiulis' letter.

First, we believe it is important to point out what this $92,000 actually represents. While Guzzler Manufacturing, Inc. ("Guzzler") was owned by Powerscreen, in the normal course of its business, Guzzler would make an annual insurance premium payment in September. In September 1992, as in years past, Guzzler paid its annual insurance premium which covered Guzzler from September 1992 to August 1993. At the time of the closing of the purchase and sale of Guzzler to Elgin/Federal Signal from Powerscreen, Guzzler had in place insurance coverage which amounted to approximately $92,000 in pre-paid insurance premiums, that protected it from March 15, 1993 to August 31, 1993. Therefore, at the time the closing balance sheet was prepared, Guzzler had a $92,000 asset relating to this amount of insurance coverage. That is, as a standard accounting treatment the amount of the annual insurance premium relating to the coverage period from March 15, 1993 to August 31, 1993 must be reflected as an asset in Guzzler's financial statements.

This background information is important in evaluating the above quoted paragraph contained in Mr. Valiulis' March 22, 1995 letter. Mr. Valiulis' letter confuses two separate and distinct issues under the Stock Purchase Agreement. The first issue is the determination of the value of Guzzler through the closing balance sheet and the subsequent submissions which were submitted to the arbitrator and finalized by the decision of the arbitrator. The second issue concerns the aged receivables (i.e. the 120 days past due accounts receivable) which by its own terms (120 days after closing) and through the Stock Purchase Agreement were to be determined outside of the arbitration.

Since the $92,000 insurance prepayment was listed as an asset of Guzzler by Elgin/Federal Signal in the closing balance sheet, it was properly before the arbitrator and Powerscreen made no objection. The fact that Elgin/Federal Signal classified this asset of Guzzler as a "receivable" in its list of aged receivables instead of a "prepayment" does not magically transform it into a past due account that was to be listed on the aged receivables list as per the Stock Purchase Agreement. These are two separate issues under the Stock Purchase Agreement, and Powerscreen has consistently treated them as such.

As required by the Stock Purchase Agreement, on July 15, 1993 (120 days after closing), Elgin/Federal Signal presented Powerscreen with its first listing of the aged receivables. On

July 16, 1993, more than eight months before the arbitrator determined the value of Guzzler, Powerscreen replied to Elgin/Federal Signal's listing of aged receivables, and informed Elgin/Federal Signal that the $92,000 insurance prepayment should not be included in the aged receivable list. In stating that the $92,000 insurance prepayment has been finally and conclusively determined by the arbitrator as a receivable, Elgin/Federal Signal is comparing apples with oranges. There are, in fact, two separate issues at hand, the closing balance sheet of Guzzler submitted to the arbitrator and the aged receivables issue to be determined outside the arbitration.

With regard to the closing balance sheet, which was to enable the arbitrator to determine the net asset position of Guzzler as of March 15, 1993, Powerscreen's concern was that the $92,000 insurance prepayment be included as an asset to Guzzler. Inasmuch as the closing balance sheet submitted by Eglin/Federal Signal reflected this $92,000 insurance prepayment as an asset, Powerscreen did not object. On the other hand, with regard to the aged receivables issue, Powerscreen has objected from the outset that this $92,000 insurance prepayment not be classified as a past-due account receivable. Powerscreen has maintained this position throughout its dealings with Elgin/Federal Signal. In fact, in attempting to settle the entire aged receivables issue as is required by the Stock Purchase Agreement, Powerscreen tendered payment to Elgin/Federal Signal for the entire aged receivables it agreed were due and owing and again highlighted the insurance prepayment as not properly includable in the 120 day past-due accounts. Elgin/Federal Signal has taken the position that Powerscreen's payment of the aged receivables should be applied only to the $92,000 insurance prepayment which they somehow argue is a past-due account receivable. Powerscreen contends that both of these issues have been resolved. First, the $92,000 insurance prepayment was finally and conclusively determined by the arbitrator to be an asset of Guzzler rather than an aged receivable and was so noted on the closing balance sheet. Second, the net aged receivables, in which this $92,000 insurance prepayment does not belong, have been paid by Powerscreen in their entirety. Correspondence reflecting Powerscreen's position on these issues are attached. (These attachments are also exhibits to the deposition of Barry Cosgrove and Jeff Hunt).

We hope that the foregoing sets forth Powerscreen's position with regard to Ms. Gibbons' inquiry. Should there be any additional questions or comments, we would be happy to address them.

Very truly yours,

James L. Goyer, III

JLGIII/tf
Enclosure

cc: Linda Friedman, Esq. (Via Facsimile) (205-251-8611)
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Idele L. Weinberg
Stuart M. Widman
Jeffrey S. Wilson
Philip Wong

OF COUNSEL
Steven A. Stender

Lawrence H. Eiger
(1937-1989)

VIA FACSIMILE (205) 731-3446

March 30, 1995

WRITER'S DIRECT LINE

(312) 621-1691

The Honorable J. Foy Guin, Jr.
Senior United States District Judge
Northern District of Alabama
619 Federal Court House
1729 North Fifth Avenue
Birmingham, Alabama 35203

Re: **Elgin Sweeper Co., et al., v. Powerscreen, Case No.: CV-94-G-623-S**

Dear Judge Guin:

This is in response to the letter written by Defendant Powerscreen dated March 29, 1995, regarding the $92,000 receivable. In Powerscreen's letter, Defendant makes certain statements that are simply not true. First, Powerscreen claims that the $92,000 relates to prepaid insurance premiums on policies owned by Guzzler as of the closing date. Although the $92,000 does relate to prepaid insurance premiums, the policies involved were not an asset of Guzzler as of the closing. Rather, at the closing, those policies were assigned to Powerscreen, since Powerscreen was responsible under the agreement for product liability claims relating to machines manufactured before the sale. (See attached memo produced by Powerscreen during discovery.) Accordingly, the insurance asset belonged to Powerscreen, not Guzzler.

To reflect this transfer of an asset from Guzzler to Powerscreen, Guzzler booked it as a receivable from Powerscreen. In other words, since Guzzler had prepaid the $92,000 for the insurance and since that insurance had been assigned to Powerscreen to be used for Powerscreen's benefit, Powerscreen had to pay for that insurance. This obligation was therefore reflected on Guzzler's books as a receivable. It was also, accordingly, reflected on the closing balance sheet as a receivable.

Thus, Elgin did not misclassify the $92,000 as a receivable on the closing balance sheet, as Powerscreen claims. Rather, it properly reflected that amount as money owed by Powerscreen for the insurance that had been transferred to Powerscreen. Elgin then included this receivable on the closing balance sheet as a receivable, and not as an insurance asset. Powerscreen never objected to this classification and, therefore, that issue cannot now be raised by Powerscreen.

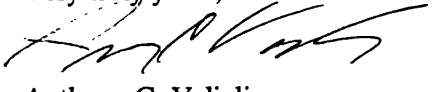
*Admitted to practice in Michigan only

Certain members are also admitted to practice in the District of Columbia and in the states of Florida, New York, Texas and Wisconsin

Moreover, since the insurance was not owed by Guzzler (after having been transferred to Powerscreen), the only way it could appear as an asset on the balance sheet was as a receivable. Accordingly, Powerscreen was simply wrong when it claimed that "the $92,000 insurance prepayment was finally and conclusively determined by the arbitrator to be an asset of Guzzler rather than an aged receivable and was so noted on the closing balance sheet." Instead, the $92,000 was noted on the closing balance sheet as a receivable from Powerscreen. Nothing in the arbitration determined that the $92,000 was not a receivable. In fact just the opposite was true. Since Powerscreen did not object to its classification as a receivable, and since the only way that it could appear on the closing balance sheet as an asset was as a receivable, the arbitration has conclusively and finally determined that the $92,000 is a legitimate receivable owed by Powerscreen.

Finally, Plaintiff would like to point out that, in its letter, Powerscreen has made a very interesting admission which contradicts the position it has taken in connection with its summary judgment. On page 3 of the letter, Powerscreen admits that "the aged receivables issue [was] to be determined outside of the arbitration." As this Court is aware, in connection with its summary judgment motion, Powerscreen has repeatedly asserted that all issues between the parties were determined in the arbitration, including the aged receivable issue. Indeed, in the supplemental materials Powerscreen specifically stated that the aged receivable issue had been resolved by the arbitration. (See pages 13-14 of Powerscreen's supplemental memorandum.) Apparently Powerscreen now acknowledges that its prior position was in error.

Very truly yours,



Anthony C. Valiulis

ACV/cam
Enc.

cc: Linda Friedman (via facsimile, 205-251-8611)
James Goyer (via facsimile, 205-254-1999)

To: J. R. Prewitt & Associates

From: Guzzler Manufacturing, Inc.

Subject: Cigna Policy No.: G1 62 61 36 0
Policy Period: 9/1/92 to 9/1/93

Effective March 16, 1993, Powerscreen International PLC sold Guzzler Manufacturing, Inc. to Federal Signal Corporation. The terms of the sale require Powerscreen to retain the liabilities of all products manufactured or shipped prior to March 16, 1993, irregardless of the date of loss.

We therefore request that Cigna assign the captioned policy to Powerscreen International PLC, effective March 16, 1993.

Much Shelist Freed Denenberg & Ament, P.C.
200 N. LaSalle Street, Suite 2100
Chicago, Illinois 60601-1095
(312)346-3100 Telephone
(312)621-1750 FAX (312)621-1484 FAX

FACSIMILE TRANSMITTAL FORM

DATE: 3-30-95

TO: Honorable J. Foy Guin

ATTN: _____

FAX NUMBER: (205) 731-3446

FROM: Anthony C. Valenti's

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ATTORNEYS AT LAW
1901 SIXTH AVENUE NORTH
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BIRMINGHAM, ALABAMA 35203-2602
(205) 254-1000
FACSIMILE (205) 254-1999

T. Louis Coppedge *Direct Dial: 205-254-1094*

April 5, 1995

Via Hand Delivery

Honorable J. Foy Guin
Senior United States District Judge
Northern District of Alabama
619 Federal Court House
1729 N. Fifth Avenue
Birmingham, AL 35203

RE: *Elgin Sweeper Co. et al v. Powerscreen International, PLC*
CV 94-G-0623-S

Dear Judge Guin:

With the Court's prior permission, Powerscreen submits this letter in response to the letter written by Plaintiffs Elgin/Federal Signal dated March 30, 1995 regarding the issues surrounding the $92,000 insurance prepayment. In Elgin/Federal Signal's letter, the Plaintiffs attempt to mischaracterize certain statements made in Powerscreen's letter to your Honor dated March 29, 1995. Although the Plaintiffs admit that the $92,000 does relate to prepaid insurance premiums, they also state that "the policies involved were not an asset of Guzzler as of closing. Rather, at the closing, those policies were assigned to Powerscreen ...." Additionally, Elgin/Federal Signal attempt to discredit Powerscreen's position with regard to the aged receivables, by stating that Powerscreen has contradicted its earlier position. Both of these contentions are misplaced.

Elgin/Federal Signal contend that the insurance policies at issue were assigned to Powerscreen at closing due to the fact that Powerscreen was responsible under the agreement for product liability claims relating to machines manufactured before the sale. Elgin/Federal Signal argues, therefore, that the insurance asset belonged to Powerscreen, not Guzzler. In support of this position, the Plaintiffs have attached a memo which purports to be an assignment

of the insurance policy at issue from Guzzler to Powerscreen. There are several important facts about this purported assignment of the insurance policy to Powerscreen, however.

First, the Stock Purchase Agreement entered into between the parties makes no mention whatsoever of any assignment of this or any other insurance policy from Guzzler to Powerscreen. However, the Stock Purchase Agreement does directly address how the parties are to handle product liability claims. (See the First Amendment to Stock Purchase Agreement ¶¶ 1 and 2; Tab 9 to Exhibit 45 B. Cosgrove Depo.). It only makes sense that if any assignment of insurance were to be made regarding product liability claims relating to machines manufactured before the sale, it would be contained in this portion of the Stock Purchase Agreement. Additionally, Elgin/Federal Signal's contention that, as of closing, the insurance policy in question was assigned to Guzzler is incorrect. Elgin/Federal Signal attempts to support their contention with a stand-alone memorandum. To put this memorandum in context it must be viewed in its entirety. It appears that this memorandum was prepared unilaterally by Elgin/Federal Signal and was attached to an inter-company correspondence from Pam Krage to Kim Wehrenberg. Subsequently, it appears this correspondence was faxed by Mary Ellen Pennicook, of Elgin/Federal Signal, to Jay Tarmon, one of the attorneys who represented Powerscreen at the closing. (A copy of this correspondence is attached hereto.) Now that this memorandum is put into context, it becomes clear this memorandum, itself, did not effecutate an assignment of the insurance policy in question, and that the parties did not agree to such an assignment at closing. More importantly, Powerscreen has contacted the offices of J.R. Prewitt & Associates to ascertain whether they had ever received this memorandum or effected an assignment of the insurance policy at issue. After a review of the file on this insurance policy, J.R. Prewitt & Associates was unable to locate this memorandum and had no evidence that the insurance policy was ever assigned to Powerscreen.[1] Furthermore, after Powerscreen had tendered payment for the 120 days aged receivables to Elgin/Federal Signal, Mr. Kim Wehrenberg wrote a letter, dated September 22, 1994, to Jeff Hunt in which Mr. Wehrenberg assigns the $92,640 "Guzzler account receivable" to Powerscreen. This purported assignment did not occur, if at all, until the policy term had expired. (A copy of the letter and assignment, which are part of Deposition Exhibit 121 are attached hereto). If this insurance policy had already been assigned to Powerscreen in March, 1993, then why was it necessary to assign it again to Powerscreen in September, 1994 after Elgin/Federal Signal unilaterally applied the payment of the 120 days aged receivables to the $92,000 insurance prepayment. [2]

---

[1] Powerscreen will be glad to submit affidavits concerning the above matters if requested to do so by the Court.

[2] Furthermore, the memorandum which Elgin/Federal Signal contends assigned the insurance from Guzzler to Powerscreen does not prove that Powerscreen ever asked for or agreed to this assignment. What good is an assignment when the assignee is unaware of the assignment and is later charged with having to pay for something that he did not ask for and that he did not know was his?

Elgin/Federal Signal also seeks to cast doubt upon the consistency of Powerscreen's position relative to the issue to the 120 days aged receivables. What Elgin/Federal Signal fails to recognize is that it set the parameters of the arbitration when it submitted its Closing Balance Sheet and position papers to the arbitrator.

Powerscreen's position with regard to the 120 days aged receivables issue in its summary judgment papers is clearly that Elgin/Federal Signal should not be able to classify accounts receivable items as "Reserve for Gross Profit on Warranty Sales," "Allowance for Doubtful Accounts" and "Allowance for Discounts" in the arbitration thereby receiving an adjustment in the Net Book Value of Guzzler, and also recoup these same items under different labels in the 120 days aged receivables outside the arbitration.

Powerscreen has consistently taken the position that the 120 days aged receivables, as contemplated by the Stock Purchase Agreement, was to be dealt with outside of arbitration, but when Elgin/Federal Signal, through its Closing Balance Sheet and position papers submitted to the arbitrator, made these items an issue, Powerscreen was forced to respond. To the extent the arbitrator decided and concluded these items they should naturally be out of the case as this Court has already ruled. Powerscreen's position on this issue has been consistent and any inconsistency that exists is due to how Elgin/Federal Signal defined the rules of the arbitration through their Closing Balance Sheet and position papers.

The Court has specifically requested Powerscreen to determine what Mr. George Vrana, the arbitrator from Arthur Andersen, said in his deposition with regard to this issue. From my review of Mr. Vrana's deposition, this issue was not directly addressed. Mr. Vrana stated that "[t]he only items we made any determination about were those specifically included in the items submitted as the objections from Powerscreen." (George Vrana Depo. p. 54).

It is true, as Powerscreen has previously acknowledged, that Elgin/Federal Signal listed the $92,000 insurance prepayment as a receivable in its Closing Balance Sheet submitted to the arbitrator, and Powerscreen made no objection because this listing treated the $92,000 as an asset of Guzzler. Clearly this insurance was an asset of Guzzler as of closing and protected Guzzler for product liability claims on machines manufactured between March 1993 and August 1993. Since the insurance had already been paid for once and it protected Guzzler through August 1993, Powerscreen had no reason to think that it would have to again pay for this insurance under the listing of the 120 days aged receivables.

Very truly yours,

T. Louis Coppedge

209066 COPPEL 3520 3

TLC/tf
Enclosure

cc: Linda Friedman, Esq. (Via Facsimile) (205-251-8611)
Richard H. Monk, III Esq. (Via Facsimile) (205-251-8611
Anthony C. Valiulis, Esq. (Via Facsimile) (312-621-1750
JoAnne A. Sarasin, Esq. (Via Facsimile) (312-621-1750

FEDERAL SIGNAL CORPORATION

KIM A. WEHRENBERG

Vice President, General Counsel
and Secretary

September 22, 1994

VIA FAX: 011-44-533-693543

Mr. Jeff Hunt
Powerscreen International PLC

Dear Jeff:

In accordance with Section 4 of the Agreement, attached is the assignment to Powerscreen of the $92,640 Guzzler account receivable, which with the 9% interest pursuant to Section 11 of the Agreement, equates to the $102,089.55 Powerscreen wire transferred to Elgin last week.

Sincerely,

Kim A. Wehrenberg

KAW:ln
Attachment

E 9083

ASSIGNMENT

Guzzler Manufacturing, Inc. ("Guzzler") hereby assigns and transfers to Powerscreen International PLC all of Guzzler's rights, title and interests in the Guzzler Closing Balance Sheet Account Receivable of $92,640 owed by Powerscreen to Guzzler for Cigna Policy No. G1 62 61 30 0.

IN WITNESS WHEREOF, this assignment is executed on this 21st day of September, 1994.

Guzzler Manufacturing, Inc.

By: Kim A. Wehrly

E 9084

MAR-23-93 TUE 11:43 FEDEF SIGNAL CORP FAX NO. 708 954 2041 P. 01

FEDERAL SIGNAL CORPORATION
CORPORATE OFFICE

FAX (708) 954-2041

TO: Jay Tannon FAX: (502) 581-1087 # OF PAGES 3

COMPANY: Brown Todd & Heyburn

MESSAGE: Jay - I am passing along this memo from our risk Managers. Please forward to Powerscreen for their benefit, otherwise policy will be cancelled

FROM: MaryEllen Penecost

FEDERAL SIGNAL CORPORATION — INTRA-COMPANY CORRESPONDENCE

Date: March 19, 1993

To: Kim Wehrenberg

From: Pam Krage

Location: Corporate

Location: Corporate

Phone: (708) 954-2024

Subject: General/Product Liability Insurance
Guzzler Manufacturing, Inc.
Cigna Policy #G16261300
Policy Period: 9/1/92 to 9/1/93

In order to have the captioned policy transferred to Powerscreen, Guzzler Manufacturing, Inc. must advise their broker to contact Cigna and request that it be assigned to Powerscreen International PLC. Otherwise, I recommend we cancel this policy, effective 3/16/93.

In order to reconsider the indemnification obligation after three years, in compliance with the First Amendment to Stock Purchase Agreement, we require evidence of Powerscreen's ongoing insurance coverage and claims data updated annually.

Sample wording is attached. Please advise as soon as possible.

Pam Krage

PK:sj

enclosure

To: J. R. Prewitt & Associates

From: Guzzler Manufacturing, Inc.

Subject: Cigna Policy No.: G1 62 61 30 0
Policy Period: 9/1/92 to 9/1/93

Effective March 16, 1993, Powerscreen International PLC sold Guzzler Manufacturing, Inc. to Federal Signal Corporation. The terms of the sale require Powerscreen to retain the liabilities of all products manufactured or shipped prior to March 16, 1993, irregardless of the date of loss.

We therefore request that Cigna assign the captioned policy to Powerscreen International PLC, effective March 16, 1993.

MAYNARD, COOPER & GALE, P.C.
ATTORNEYS AT LAW
1901 SIXTH AVENUE NORTH
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(205) 254-1000
FACSIMILE (205) 254-1999

T. Louis Coppedge *Direct Dial No. 205-254-1094*

April 6, 1995

VIA HAND DELIVERY

Honorable J. Foy Guin
Senior United States District Judge
Northern District of Alabama
619 Federal Court House
1729 N. Fifth Avenue
Birmingham, AL 35203

Re: *Elgin Sweeper Co., et al. v. Powerscreen International, PLC*
CV 94-G-0623-S

Dear Judge Guin:

This afternoon, I was contacted by Ms. Libby Martin at J.R. Prewitt & Associates regarding the insurance policy that has been the subject of several letters directed to your Honor. Ms. Martin informed me that they had conducted additional research into all of the files that they had concerning Guzzler, which required her to pull several files from an archived area. Ms. Martin said that after this additional research she located correspondence which indicates that they received the memorandum regarding a potential assignment of the insurance policy from Guzzler to Powerscreen. Ms. Martin informed me that they received this memorandum attached to a letter from Ms. Mary Ellen Pennicook of Federal Signal. I then asked Ms. Martin whether J.R. Prewitt & Associates actually effected an assignment of this insurance policy from Guzzler to Powerscreen, and if they had done so, then why Powerscreen was not notified of such assignment. Ms. Martin replied that she did not show that an actual assignment of the policy had been made, but rather two additional insureds had been listed on the policy effective March 31, 1993. Those two additional insureds were Powerscreen International, PLC and Federal Signal Corporation. It appears that both the purchaser and seller corporations were listed as additional insureds on the policy after the closing of the transaction between the parties. I have requested a copy of the Addendum to the insurance policy which shows this change from Ms. Martin, and once I have received it I will forward a copy to the Court.

In light of the confusion surrounding this issue, I felt it was necessary to clarify to the court the information that has just been passed along to me. Should you have any questions or comments regarding this matter please do not hesitate to call me.

Very truly yours,

T. Louis Coppedge

TLC/tf

cc: Linda Friedman, Esq. (Via Facsimile) (205-251-8611)
Richard H. Monk, III Esq. (Via Facsimile) (205-251-8611)
Anthony C. Valiulis, Esq. (Via Facsimile) (312-621-1750)
JoAnne A. Sarasin. (Via Facsimile) (312-621-1750)

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T. Louis Coppedge *Direct Dial No. 205-254-1094*

April 7, 1995

VIA HAND DELIVERY

Honorable J. Foy Guin
Senior United States District Judge
Northern District of Alabama
619 Federal Court House
1729 N. Fifth Avenue
Birmingham, AL 35203

Re: *Elgin Sweeper Co., et al. v. Powerscreen International, PLC*

Dear Judge Guin:

Enclosed is a copy of the Declarations Update Endorsement pertaining to the insurance policy at issue in the above referenced matter. I am forwarding this copy to you in keeping with my most recent letter. It is clear from this document that both Powerscreen International, PLC and Federal Signal Corporation were listed as additional insureds on the insurance policy effective March 31, 1993, two weeks after the closing. The Declaration also states that "[a]ll other elements of your policy declarations are not affected by this endorsement." Ms. Libby Martin, of J.R. Prewitt Associates, also mentioned to me yesterday that the policy expired by its terms on September 1, 1993, and was subsequently canceled due to non-renewal. Hopefully, this information will be helpful to your Honor.

Should you have any questions or comments regarding this matter, please do not hesitate to call either Jim Goyer or me.

Very truly yours,

T. Louis Coppedge

TLC/tf
Enclosure

cc: Linda Friedman, Esq. (Via Facsimile) (205-251-8611)
Richard H. Monk, III Esq. (Via Facsimile) (205-251-8611)
Anthony C. Valiulis, Esq. (Via Facsimile) (312-621-1750)
JoAnne A. Sarasin, Esq. (Via Facsimile) (312-621-1750)

INSURANCE COMPANY OF NORTH AMERICA

SYM: OGL

POLICY ID: G1 62 61 30 0

PRODUCER BILLED

DECLARATIONS UPDATE ENDORSEMENT

NAMED INSURED

GUZZLER MANUFACTURING, INC.
P O BOX 66
BIRMINGHAM, AL 35201

SERVICE OFFICE BIRMINGHAM

ENDORSEMENT EFFECTIVE DATE 03/31/93 POLICY PERIOD 09/01/92 TO 09/01/93

ELEMENTS OF YOUR POLICY DECLARATIONS ARE CHANGED AS SHOWN BELOW. ALL OTHER ELEMENTS OF YOUR POLICY DECLARATIONS ARE NOT AFFECTED BY THIS ENDORSEMENT. THESE CHANGES APPLY TO LOSS, INJURY, OR DAMAGE WHICH OCCUR(S) ON OR AFTER THE EFFECTIVE DATE SHOWN ABOVE.

PREMIUM CHANGES

YOUR TOTAL PREMIUM IS INCREASED BY $100.

OTHER CHANGES

CG-2026 ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION ALSO APPLIES TO:

SCHEDULE

NAME OF PERSON OR ORGANIZATION: 1 - POWERSCREEN INTERNATIONAL PLC
2 - FEDERAL SIGNAL CORPORATION

AUTHORIZED AGENT

ENDORSEMENT # 1 (LAST PAGE) PAGE 1

THIS COPY TO: INSURED

CC-9P99

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
619 FEDERAL COURTHOUSE
1729 FIFTH AVENUE NORTH
BIRMINGHAM, ALABAMA 35203

CHAMBERS OF
J. FOY GUIN, JR
JUDGE

(205) 731-1795
FTS 229 1795

July 7, 1995

James L. Goyer III / Tony G. Miller / T. Lewis Coppedge
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1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602

Anthony C. Valiulis / John H. Ward / Joanne A. Sarasin
MUCH SCHLIST FREED DENENBERG & AMENT, P.C.
200 N. LaSalle, Suite 2100
Chicago, IL 60601-1095

Linda A. Friedman / Richard H. Monk III
BRADLEY, ARANT, ROSE & WHITE
2001 Park Place Suite 1400
Birmingham, Alabama 35203-2736

Re: Elgin Sweeper Co. v. Powerscreen
Civil Action No. 94-G-0623-S

Counsel:

Judge Guin would like answers to the following questions:

Did the arbitrator have the $92,000.00 issue before him? If he treated it as an asset or receivable, the issue is closed. How does his deposition testimony answer the question? If he arbitrated the issue without having the right to arbitrate it, and his right to arbitrate it was not questioned, his decision is binding. If he didn't decide the issue, it is a jury question not subject to discussion at this time.

You are to respond to the above with **copies of record excerpts** by July 14, 1995.

Thank you.

Sincerely,

Mary Anne Gibbons

Mary Anne Gibbons
Law Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

J. FOY GUIN, JR., JUDGE
FEDERAL COURTHOUSE
BIRMINGHAM, ALABAMA 35203

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Birmingham, Alabama 35203-2602

cc: TGM
TLC

BRADLEY, ARANT, ROSE & WHITE
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SUITE 2000
BIRMINGHAM, ALABAMA 35203

FACSIMILE (205) 251-9915

July 14, 1995

Direct Dial (205) 521-8516

VIA HAND DELIVERY

Honorable J. Foy Guin, Jr.
United States District Court
Northern District of Alabama
1729 North 5th Avenue
Birmingham, Alabama 35203

Re: Elgin Sweeper Company v. Powerscreen International, PLC
Civil Action No.: CV-94-G-0623-S

Dear Judge Guin:

This is in response to the letter from your office dated July 7, 1995, regarding the $92,640 receivable issue. To answer the Court's questions, the arbitrator had the issue before him only indirectly. This is because, as indicated in Plaintiffs' prior submissions, Powerscreen did not object to the inclusion of the $92,640 as an account receivable on the closing balance sheet submitted by Plaintiffs. Because it was not objected to by Powerscreen, the arbitrator did not specifically consider it and was not questioned about it during his deposition. Accordingly, there are no relevant deposition excerpts, since the arbitrator did not make any express findings regarding the $92,640. If Powerscreen had objected to plaintiffs' inclusion of the $92,640 as a receivable, which Powerscreen had the right to do, then the arbitrator would have expressly dealt with it.

If we can be of any further assistance, please let us know.

Very truly yours,

Richard H. Monk III

RHM,III:sld

cc: T. Louis Coppedge, Esq. (via hand delivery)

bcc: Anthony C. Valiulis, Esq. (via facsimile)
Kim Wehrenberg, Esq.

BRADLEY, ARANT, ROSE & WHITE
1400 PARK PLACE TOWER
BIRMINGHAM, ALABAMA 35203

DATE: July 14, 1995 TIME: _____

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Anthony C. Valiulis, Esq. FAX NO. 312-621-1750

PLACE: Much, Shelist, Freed PHONE NO. _____

THIS TRANSMITTAL BEING SENT BY:

NAME: Richard H. Monk III, Esq. DIRECT DIAL 205-521-8516

MESSAGE:

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NAME: Margie
Operator

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ATTORNEYS AT LAW
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2400 AMSOUTH/HARBERT PLAZA
BIRMINGHAM, ALABAMA 35203-2602
(205) 254-1000
FACSIMILE (205) 254-1999

T. Louis Coppedge

Direct Dial: 205-254-1094

July 14, 1995

VIA HAND DELIVERY

Honorable J. Foy Guin, Jr.
United States District Court
Northern District of Alabama
Hugo Black United States Courthouse
1729 5th Avenue North
Birmingham, Alabama 35203

Re: *Elgin Sweeper, et al. v. Powerscreen International, PLC, et al.*

Dear Judge Guin:

This letter will serve to answer the questions raised in your letter dated July 7, 1995 to all counsel in the above-referenced matter and will set forth Powerscreen's position on this issue. It bears repeating, however, that the $92,640 insurance prepayment issue represents an alleged receivable that Powerscreen has already paid for once. Plaintiffs are trying to get Powerscreen to pay for this same insurance again by their unilateral and unsuccessful attempt to assign this insurance to Powerscreen.

Question No 1. Did the Arbitrator Have the $92,000 Issue Before Him?

Answer to Question No. 1.

Although no objection was presented to the arbitrator as to the classification of the $92,640 insurance prepayment in the Closing Balance Sheet, the arbitrator made a final and binding decision as to the Closing Balance Sheet of Guzzler and the $92,640 insurance prepayment was included as an asset of Guzzler in the line item "other receivables." A copy of the Closing Balance Sheet recently attached to the affidavit of Richard L. Ritz, is also attached hereto as Exhibit A.

> Paragraph 4 of the Stock Purchase Agreement provides that Guzzler and Elgin "shall prepare and deliver to Seller [Powerscreen], an unaudited Closing Balance Sheet of the Company [Guzzler] as of the Closing Date, which shall be

> prepared in accordance with United States generally accepted accounting principles and shall include all appropriate year-end reserves, accruals and allowances. . . . A reserve for accounts receivable shall be included and if the company does not collect all accounts receivables existing as of the Closing, within 120 days of Closing then Seller [Powerscreen] shall pay to Buyer [Elgin] the amount of the uncollected accounts, less the reserve, and such accounts shall be assigned to Seller. . . . In the event Seller [Powerscreen] and Buyer (Elgin] are not able to agree within 90 days of Closing on the Company's [Guzzler] appropriate "Net Book Value". . .then any objections that the Seller has to the Closing Balance Sheet shall be submitted to the Independent Audit firm of Arthur Andersen for an opinion in light of the terms and provisions of this Agreement and such opinion shall be final and binding on the parties."

In preparation of the Closing Balance Sheet, Elgin created a line item for "other receivables" in which it included the $92,640 insurance prepayment. See Exhibit A. Also on the Closing Balance Sheet is a line item for "accounts receivable." This reserve, "accounts receivable", is specifically mentioned in paragraph 4 of the Stock Purchase Agreement in connection with the 120 days past due accounts receivable issue, yet the $92,640 insurance prepayment does not appear in this reserve.

As Powerscreen has noted on several occasions, since the $92,640 insurance prepayment was classified as "other receivables" on the asset side of the ledger of the Closing Balance Sheet, Powerscreen had no objection to this classification. That is, the inclusion of the $92,640 insurance prepayment being listed on the asset side of the Closing Balance Sheet increased the Net Book Value of Guzzler which was to Powerscreen's advantage. Nevertheless, although the $92,640 insurance prepayment was not listed in the line item for "accounts receivable" in preparation of the Closing Balance Sheet, the $92,640 insurance prepayment somehow found its way onto the subsequent listing by Elgin/Federal Signal of the 120 days past due accounts receivable which Powerscreen was to pay for pursuant to Paragraph 4 of the Stock Purchase Agreement. The Stock Purchase Agreement contemplates that any objections that Powerscreen may have had to the Closing Balance Sheet were to be submitted to Arthur Andersen for a determination. Since Powerscreen had no objection to the $92,640 insurance prepayment being classified as a "other receivable" and an asset of Guzzler, Arthur Andersen was not called upon to make an express determination on that specific issue. However, because Elgin/Federal Signal itself listed the $92,640 insurance prepayment as an "other receivable" on the asset side of the Closing Balance Sheet submitted to Arthur Andersen, it was finally and

conclusively determined by the Arbitrator as an asset of Guzzler. Elgin/Federal Signal thus is estopped from re-classifying the $92,640 insurance pre-payment as part of the 120 day accounts receivable.

Question No. 2. How Does His [George Vrana] Deposition Testimony Answer the Question?

Answer to Question No. 2.

The deposition testimony of George Vrana does not specifically address the $92,640 insurance prepayment issue. Mr. Vrana testified in his deposition that Arthur Andersen did not address the 120 past due accounts receivable issue. *See Vrana Depo.* at page 90, a copy of which is attached hereto as Exhibit B.

However, the recent deposition testimony of Susan Ragland, Vice President and Controller at Guzzler, conclusively supports Powerscreen's position regarding the $92,640 insurance prepayment issue. Ms. Ragland testified that although the $92,640 insurance prepayment amount was included on the list of accounts receivable that was provided to Powerscreen in July, 1994, this item had not been listed as an account receivable on the schedule that was prepared at the time of closing. It was Ms. Ragland's testimony that this item was added as an account receivable after the Closing Balance Sheet was prepared. *See Ragland Depo.* at pp. 346-349, copies of these pages from Ms. Ragland's deposition are attached hereto as Exhibit C. Ms. Ragland's testimony makes it clear that at the time of the preparation of the Closing Balance Sheet, the $92,640 insurance prepayment was not an account receivable that appeared on Guzzler's aging accounts receivables listing. It was only after the preparation of the Closing Balance Sheet that Elgin/Federal Signal unilaterally attempted to transform the $92,640 insurance prepayment into a past due account for which they sought payment from Powerscreen. Since this item was an asset included on the Closing Balance Sheet submitted to Arthur Andersen and protected Guzzler from liability claims on machines manufactured between March, 1993 and August, 1993, there was no reason for Powerscreen to believe it would have to pay for this insurance again. Therefore, Powerscreen is entitled to summary judgment on this issue.

Very truly yours,

T. Louis Coppedge

TLC/mpw
cc: Anthony C. Valiulis, Esq.
Richard H. Monk III, Esq.

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A

GUZZLER MANUFACTURING, INC.
BALANCE SHEET
MARCH 15, 1993

ASSETS

CURRENT ASSETS	
Cash equivalents	$1,026,424
Accounts receivable, less allowance for doubtful accounts of $42,234	3,204,247
Other receivables	116,050
Inventories	4,802,445
Prepaid expenses	127,732
Deferred income taxes	376,272
Total current assets	9,653,170
PROPERTIES AND EQUIPMENT	
Land	390,845
Building	1,988,515
Machinery and equipment	1,065,493
Furniture and fixtures	634,840
	4,079,693
Less accumulated depreciation	(1,662,161)
	2,417,532
NET REALIZEABLE VALUE OF ASSETS NOT IN USE	188,000
INTANGIBLES AND OTHER ASSETS	71,142
	$12,329,844

See Notes to Balance Sheet.

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES	
Current maturities of long-term debt	$120,000
Accounts payable	2,104,894
Accrued expenses	1,944,357
Due to parent company:	
Note payable	4,922,296
Dividend payable	1,995,000
Income taxes payable	80,152
Total current liabilities	11,166,699
LONG-TERM DEBT	730,000
STOCKHOLDER'S EQUITY	
Common stock, $1 par value, 1,000,000 shares authorized, 95,000 shares issued	95,500
Additional paid-in capital	604,206
Treasury shares, 75,500 shares, at cost	(293,455)
Retained earnings	26,894
	433,145
CONTINGENCIES	
	$12,329,844

EXHIBIT A

2

B

A. No.

Q. Sales, general -- what's SG&A expenses, sales, general and administration?

A. Selling, general and administrative expenses. No.

Q. Did Arthur Andersen in connection with the arbitration make any determination regarding Guzzler's fair market value?

A. No.

Q. Did they make any determination regarding Powerscreen's obligation, if any, under the Stock Purchase Agreement to purchase back uncollected receivables?

A. No.

Q. I asked you about representations made by Powerscreen regarding sales volume, cost, profit margins, et cetera. Let me ask you a little differently. In connection with this arbitration did Arthur Andersen make any determinations regarding Guzzler's sales volumes or costs or profit margins or net profit margins?

A. No.

Q. Did Arthur Andersen make any determinations pursuant to accuracy of any representations made by Powerscreen to Elgin

C

EXHIBIT C

because of something that occurred after March 16, '93?

MR. VALIULIS: Object to the form of the question. It's a little unclear.

A. Are you asking whether some of these accounts were not paid because of a situation that arose after March 16?

Q. Where somebody called and said I'm not going to pay this because of you did this and whatever, this was incurred after March 16?

A. I'm not aware of any situations like that.

Q. There's one item on here which is 3-15 for $92,600 for an insurance thing. Do you see that?

A. Yes.

Q. Was that something that just popped up when you did this computer run, or was that something that was added to this list?

A. This $92,640 was included in

our accounts receivable as of March 15th, '93.

Q. The list of accounts receivable?

A. Yes. The accounts receivable that tied to that closing balance sheet on March 15th, '93.

Q. Okay. I'm not sure what you are saying.

MR. VALIULIS: It means when it was run on July 14th, it popped up -- to answer your question -- because it was already there March 15th.

Q. When was it put on? When was that one added to the list of accounts receivables?

A. It was added to our accounts receivable balance in connection with preparing the closing balance sheet as of March 15th, '93.

Q. Which was done after March 15, '93?

A. That's correct.

Q. There was not if you had -- on March 16, if you had punched up a list of outstanding accounts receivable, that $92,000 number would not have shown up?

A. It would not have appeared on our aging as of that date.

Q. Can you tell when it was added to the list?

A. No.

Q. Or when it was put into the computer as an account receivable?

A. No.

Q. Do you have any knowledge of when it was put in?

MR. VALIULIS: Outside of what she testified to? She said it was in connection with the closing balance.

MR. MILLER: I know, but as far as a time.

A. No. I don't have knowledge.

Q. Or a month?

A. Memory. I don't have memory of that, no.

Q. Or a month?

A. No.

(Whereupon, Plaintiff's Exhibit 265 was marked for identification.)

Q. Exhibit 265 is a letter to you dated September 14, 1994 from Jeff Hunt, with reference 120 days, accounts receivable. Do you recall receiving the copy of this letter?

A. Yes.

Q. Mr. Hunt references a meeting of August 18 to discuss the -- this issue. Is that the meeting that you were talking about earlier where Mr. Cosgrove and Mr. Hunt met at your office to discuss this issue and they were provided access to information concerning these accounts?

A. Yes.

Q. That's the meeting that I'm referring to.

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July 17, 1995

Direct Dial (205) 521-8516

VIA HAND DELIVERY

Honorable J. Foy Guin, Jr.
United States District Court
Northern District of Alabama
1729 North 5th Avenue
Birmingham, Alabama 35203

Re: Elgin Sweeper Company v. Powerscreen International, PLC
Civil Action No.: CV-94-G-0623-S

Dear Judge Guin:

In response to the Court's request, on Friday both parties submitted letters answering certain questions. In Defendant's response, however, Powerscreen did more than answer the Court's questions. It also raised two new arguments. Since Plaintiffs have not had an opportunity to address these arguments before, they seek to do so now.

First, in its letter Defendant brought up for the first time deposition testimony from Susan Ragland, Guzzler's controller. According to Defendant, Ms. Ragland supposedly admitted during her deposition that the $92,640 receivable was not a receivable at the time of the closing but only became one later. This is not what Ms. Ragland said, however, as can be readily ascertained from a reading of the deposition excerpts attached to Defendant's letter.

What happened was this. At the closing, which physically took place on March 16, 1993 but was as of March 15, Plaintiffs asked Defendant if it wanted to retain the protection of certain insurance that Guzzler intended to cancel and obtain a $92,640 refund. Since Powerscreen was obligated to indemnify Plaintiffs for post-closing product

liability claims, it wanted to retain the benefit of this insurance. On the other hand, because Guzzler was already protected against such claims by Federal Signal's risk management program, as well as by Defendant's indemnity, it did not need this additional insurance. Accordingly, the coverage was assigned to Defendant as of the closing. The paper work, of course, had to take place after the closing. It was the parties agreement, however, that the effective date of the assignment would be as of the closing. (See the affidavits attached to Plaintiffs' initial Motion for Reconsideration).

What this means is that, if someone at Guzzler ran an accounts receivable listing on the actual day of closing, the $92,640 receivable would not show up, since it had not yet been documented. However, that does not mean that the receivable did not exist as of that date. Indeed it did, since this is what the parties agreed to at the closing. It was then later documented as of the date of closing, March 15, 1993, and then was included as a receivable on the Closing Balance Sheet. This is all that Ms. Ragland said at her deposition. Thus, Ms. Ragland stated quite explicitly that "this $92,640 was included in our accounts receivable as of March 15, 1993." (Ragland Dep. 346-47). She also stated, again explicitly, that it was added to the "accounts receivable balance in connection with preparing the Closing Balance Sheet as of March 15, 1993." (Ragland Dep. 374).

Second, even though Defendant now admits that the $92,640 was listed as a receivable on the Closing Balance Sheet, it for the first time claims that, even though it was a receivable, it was not listed as an account receivable and therefore is not covered by paragraph 4 of the Stock Purchase Agreement. As the Court is aware, under the Stock Purchase Agreement, Defendant is obligated to pay Plaintiffs for any accounts receivable as of March 15, 1993, which were still unpaid 120 days after closing. Defendant claims that, even though the $92,640 was clearly listed on the Closing Balance Sheet as a receivable, it does not fall within the purview of this provision of the agreement. In so arguing, however, Defendant ignores that, whether or not this $92,640 is a receivable or an account receivable covered by paragraph 4, it would still be owed by Powerscreen.

If the $92,640 is an account receivable covered by paragraph 4, then Powerscreen owes it to Plaintiffs under that paragraph since it was not collected within 120 days. But even if it is not an account receivable covered by paragraph 4, but is simply a receivable, it is still owed by Powerscreen. Even if Powerscreen does not owe it under paragraph 4 as an uncollected account receivable, it nonetheless owes the $92,640 to Guzzler since it was a receivable reflecting Powerscreen's obligation to pay Guzzler

for the insurance coverage Powerscreen had received. Certainly nothing in Arthur Andersen's decision could in any way be construed as holding that this $92,640 is not a receivable owed by Powerscreen. And nothing in Arthur Andersen's decision could be construed as holding that the $92,640 was simply a general asset for prepaid insurance, Defendant's original position.

One final point, it appears that the parties do agree that Arthur Andersen did not specifically deal with this issue.

Very truly yours,

Richard H. Monk III

RHM,III:sld

cc: T. Louis Coppedge, Esq. (via hand delivery)

bcc: Anthony C. Valiulis, Esq. (via facsimile)

BRADLEY, ARANT, ROSE & WHITE
1400 PARK PLACE TOWER
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DATE: July 17, 1995 TIME: _____

PLEASE DELIVER THE FOLLOWING PAGES TO:

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April 17, 1998

VIA HAND DELIVERY

The Honorable J. Foy Guin, Jr.
United States District Judge
Hugo L. Black U.S. Courthouse
1729 North Fifth Avenue
Birmingham, Alabama 35203

Re: ***Elgin Sweeper Co., et al. v. Powerscreen*, CV 94-G-0623 S**

Dear Judge Guin:

In your letter dated April 9, 1998, you requested counsel to state whether "it can be conceded that Guzzler's insurance policy was endorsed to add Federal/Elgin and Powerscreen as additional insureds." The undisputed facts show that J.R. Prewitt & Associates, at the request of Guzzler's controller, Susan Ragland, had the policy in question endorsed so as to add both Federal/Elgin and Powerscreen as additional insureds. *See* Supplemental Affidavit of John R. Prewitt, Jr. ¶¶ 5-7, Ex. 1.

However, Powerscreen neither knew about, requested or consented to this endorsement.

Very truly yours,

T. Louis Coppedge

TLC:jt
cc: Anthony C. Valiulis, Esq.
Richard H. Monk, III, Esq.

411984 COPPEL

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BY FACSIMILE (205) 731-3446

April 20, 1998

The Honorable J. Foy Guin, Jr.
United States District Judge
Hugo L. Black U.S. Courthouse
1729 North Fifth Avenue
Birmingham, Alabama 35203

Re: *Elgin Sweeper v. Powerscreen*, CV 94-G 0623S

Dear Judge Guin:

This is in response to Powerscreen's counsel's letter of April 17, 1998. In that letter, Powerscreen makes two statements that are not supported by the record.

First, Powerscreen's counsel states that "Powerscreen neither knew about, requested, or consented to this endorsement [to add Federal/Elgin and Powerscreen as additional insureds]." This statement is made by counsel and is not supported by any affidavit, deposition testimony, or other admissible evidence. No where in the record is there any evidence that Powerscreen did not know about, request, or consent to the endorsement made by its insurance agent.

Second, Powerscreen's counsel claims that Guzzler's controller, Susan Ragland, requested that the policy was endorsed "to add both Federal/Elgin and Powerscreen as additional insureds." In support, Powerscreen refers to the supplemental affidavit filed by the insurance broker, John R. Prewitt, Jr. In that affidavit, however, there is no support for Powerscreen's statement that Guzzler's controller asked that both Federal/Elgin and Powerscreen be added as additional insureds. To the contrary, the letter sent by Ms. Ragland specifically asked that the policy be assigned to Powerscreen. (See Exhibit No. 2 to the affidavit of John R. Prewitt, Jr.) Instead of assigning it, however, Powerscreen's broker added Powerscreen and Federal Signal as additional insureds. But this was not done at the request of Ms. Ragland.

Very truly yours,

Anthony C. Valiulis
ACV/pab
cc: T. Lewis Coppedge
(By Facsimile 205-254-1999)
Richard Monk
Kim Wehrenberg
(By Facsimile 630-954-2041)

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April 21, 1998

Honorable J. Foy Guin, Jr.
Senior United States District Judge
Northern District of Alabama
619 Federal Courthouse
1729 North 5th Avenue
Birmingham, Alabama 35203

Re: Elgin Sweeper Company, et al. v. Powerscreen International, et al., Case No. CV-94-G-623-S

Dear Judge Guin:

This letter on behalf of Powerscreen responds to Federal Signal's counsel's letter of April 20, 1998.

First, counsel for Federal Signal misses the point of our argument. There is *no* evidence in the record that Powerscreen knew about, requested or consented to the endorsement to add Powerscreen as an additional insured to the Guzzler insurance policy administered by *Guzzler's* broker, J. R. Prewitt and Associates, with respect to the general liability/products liability policy number OGLG16261300, at issue in this case. This represents a failure of proof by Federal Signal, who has the burden here.

Specifically, the March 29, 1993 letter from Susan Ragland as controller of Guzzler and the March 31, 1993 letter from Libby Martin of J.R. Prewitt and Associates are the two operative documents concerning the inclusion of Powerscreen and Federal Signal as a "additional insureds" to this policy (attached as Exhibits 2 and 3 to Supplemental Affidavit of John R. Prewitt, Jr.). *Neither* letter, however, was sent to Powerscreen based on the evidence of record. Accordingly, there is absolutely no evidence before the Court that

Powerscreen knew about, consented to or requested this policy change. In fact, Jay Tannon's affidavit is directly to the contrary.

Second, contrary to the argument of Federal Signal's counsel in his letter of April 20, 1998, we have not argued that Susan Ragland requested that the policy be endorsed "to add both Federal/Elgin and Powerscreen as additional insureds." (Valiulis letter of April 20, 1998 at p. 1). In fact, Powerscreen argued as follows in its response to plaintiff's brief in support of its cross-motion for summary judgment filed on March 19, 1998:

> As previously stated, the insurance policy in question was never 'assigned to Powerscreen'. . . . However, a declaration endorsement made effective March 31, 1993 changed the policy to designate both Powerscreen and Federal Signal as additional insureds. . . . This *change* came about due to a unilateral request from Susan Ragland, Guzzler's former controller, to J.R. Prewitt & Associates. . . . Based upon this unilateral request by Guzzler, Ms. Libby Martin, an employee at J.R. Prewitt & Associates, wrote a letter to CIGNA requesting that both Powerscreen and Federal Signal be made additional insureds on the policy. . . . Id. at 2-3.

This argument was based on the supplemental affidavit of John R. Prewitt attached to Powerscreen's supplemental brief as exhibit A. In this supplemental affidavit at ¶ 6, Mr. Prewitt stated as follows:

> The change in the policy was initiated by Mrs. Susan Ragland. A copy of a letter dated March 29, 1993 from Susan Ragland to Jack Prewitt is attached hereto as exhibit 2. Subsequently, on March 31, 1993, Libby Martin, one of my employees, wrote a letter to CIGNA requesting that both Powerscreen and Federal Signal be made additional insureds to the policy. A copy of Ms. Martin's letter is attached hereto as exhibit E3.

Supplemental Affidavit of John R. Prewitt, Jr. at ¶ 6. Thus, counsel for Federal Signal's "second argument" in his April 20, 1998 letter is a complete red herring and should be disregarded by the Court.

Please let me know if we can provide the Court with any additional information or answer any questions you may have. Thank you very much for your consideration in this case.

Respectfully,

James L. Goyer III

JLGIII/rp
Writer's Direct Dial - (205) 254-1034
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Ms. Joanne Sarasin - Via U.S. Mail & Fax (312) 621-1750
Mr. Richard Monk